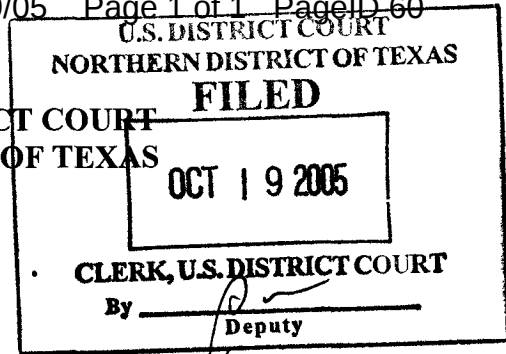


**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**RENE PENA HERNANDEZ****Petitioner,****VS.**

**DOUGLAS DRETKE, Director  
Texas Department of Criminal Justice,  
Correctional Institutions Division**

**Respondent.**

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**NO. 3-05-CV-0678-B**

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF  
THE UNITED STATES MAGISTRATE JUDGE**

United States Magistrate Judge Jeff Kaplan made findings, conclusions and a recommendation in this case. Respondent filed objections, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. Accordingly, the Court adopts the Findings, Conclusions and Recommendation of the United States Magistrate Judge with the exception that the second paragraph of page four should read, "The statute was tolled from April 23, 2002 until October 3, 2003, a total of 554 days, while petitioner sought and obtained leave to file an out-of-time appeal and pursued his appellate remedies." See *Bautista v. McCotter*, 793 F.2d 109, 110 (5<sup>th</sup> Cir. 1986) (finding "no material distinction . . . between the failure to seek discretionary review in the Texas Court of Criminal Appeals and the failure to do so timely").

SO ORDERED this 19<sup>th</sup> day of Oct., 2005.

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JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE